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COMMITTEE AGAINST TORTURE

Seventeenth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 277th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 20 November 1996, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.277 and Add.1.

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of Poland (CAT/C/25/Add.9) (continued)

1. At the invitation of the Chairman, the delegation of Poland took places at the Committee table.

2. The CHAIRMAN invited the Polish delegation to reply to the questions asked by members of the Committee at the previous meeting.

3. Mr. DZIALUK (Poland), speaking in reference to article 56 of the Constitution, said that the existence of emergency courts, as opposed to the ordinary courts, gave no cause for concern. In addition to the ordinary courts, there was a single supreme administrative tribunal, which, however, was represented by courts in eight provincial cities. That court was competent to review administrative decisions. There was also a State court and a Constitutional Court, which had been created in 1982 during the period of martial law in Poland. The emergency courts also included military courts, which were competent to try members of the armed forces or civilians working for the military.

4. With regard to the judicial system in general, the single Supreme Court, which was made up of four chambers (criminal, civil, administrative, industrial and military), was at the top of the hierarchy. There were approximately 400 district courts, which were courts of first instance with jurisdiction over civil, family and administrative or industrial matters. Unless otherwise stipulated by law, district courts were competent to try minor matters at first instance. More serious offences fell under the jurisdiction of the provincial courts, of which there were 44. The appeal courts had recently been re-established after a 40-year hiatus. Those courts, of which there were 10, represented the second level of jurisdiction and were responsible for hearing appeals against decisions handed down by the provincial courts. The Court of Cassation had been re-established in 1986. There were 6,000 ordinary court judges. Since 1989, the Minister of Justice had also functioned as Procurator-General. Polish judges were career magistrates with university degrees who had undergone special legal training culminating in a State diploma. After serving for two years as an assistant judge, candidates could be nominated to a judgeship by the chief judge of the court in which they had held the post of assistant judge. The general assembly of magistrates considered the file and then transmitted it to the Ministry of Justice which, in turn, considered it and transmitted it to the National Judicial Council, which was presided over by the Chief Justice of the Supreme Court. The President of the Republic appointed judges to life tenure on the nomination of the council. Conditions for the appointment and dismissal of judges were governed by the judicial service act. Only as a result of disciplinary proceedings could a judge be dismissed from his post.

5. Ms. KOWALCZYK (Poland), speaking in reply to members of the Committee who had asked whether there were regulations covering the use of force against minors, said that the use of force was indeed governed and regulated by law.

However, the measures authorized were proportionate to the risks represented by the behaviour of many young people, and the recourse to certain measures (the use of some degree of physical force, isolation or straitjackets) was authorized only in very specific cases, for example, when there was a threat to the life of the person in question or to that of a third party, in cases of attempted rebellion or flight, or where there was a threat to public order.

6. The words "unlawful behaviour" would have been better translated as "illegitimate treatment", which, moreover, did not fall under the Penal Code but rather under special acts such as the prison staff act, under which civil servants were evaluated every four years. Moreover, the staff members concerned were usually trained personnel with secondary, and even university, educations. Articles 19 and 21 of that act regulated in detail the use of force, including, for example, the prohibition of any use of force against women.

7. The Committee had asked to what extent a public servant who committed an illegal act in the line of duty and on the order of a superior officer would be held responsible. In Poland, he would not be held responsible unless he had been aware of the consequences of his acts. That in no way implied impunity since, in such cases, it was the superior officer giving the order who would be held responsible and charged.

8. Mr. DZIALUK (Poland), replying to questions concerning the relationship between international instruments and domestic law, said that, like many countries, Poland had chosen not to incorporate international instruments systematically into its domestic law. With regard to the definition of torture, the Penal Code drafting committee had concluded after a lengthy debate that any act that could be defined as torture was already covered by certain provisions of the Penal Code.

9. Ms. KOWALCZYK (Poland) said that while there was no explicit definition of torture in Polish legislation, any act of that type which might be committed by a State official in the exercise of his functions would entitle the victim to redress and compensation. That also applied to acts committed by local authorities who were not, strictly speaking, State officials. She referred to the supplementary report, distributed in English to members of the Committee, the annexes to which provided statistics on convictions of State officials and compensation granted. Furthermore, under article 448 of the Civil Code, as amended by the Act of 23 August 1996, in cases involving damage to personal assets, the court could grant appropriate financial compensation to the injured party. Furthermore, anyone who had already served a prison term longer than the one to which he had been sentenced, including time spent in police custody or arbitrary detention, was also entitled to compensation. Lastly, if the State was held responsible for an act committed by an official in the exercise of his functions, the State itself was responsible for paying all compensation granted by the courts.

10. Mr. DZIALUK (Poland) also emphasized that when public servants (such as police officers, prison staff, judges or prosecutors) inflicted torture or cruel, inhuman or degrading treatment, the State rather than the official was held responsible. Compensation was generally paid by the State Treasury.

11. His delegation had decided to submit the draft code of criminal procedure, mentioned in paragraph 35 of the report, to the Committee in order to elicit the reactions and recommendations of its members. The draft called for amendments to provisions governing measures of constraint which would tend to limit considerably the frequency of its application in criminal cases and particularly in the context of arrest and pre-trial detention; however, there appeared to be major obstacles to the implementation of those amendments. For example, seizure of the passport of a non-Polish accused person (para. 35 (b)) was not compatible with the fact that, in various countries, passports were considered to be the property of the State. That measure had not, therefore, proved a viable replacement for pre-trial detention.

12. The act which had entered into force in 1996 had made several changes to the regulations governing the period during which a person could be held in police custody. The police still had a right to detain suspects for 48 hours, but they were now required to inform the suspect's family of his whereabouts so that the family could consult a lawyer on his behalf. That act also stipulated that only a court was authorized to extend the period of police custody, which meant that unless the necessary proof had been gathered during the first 48 hours, the suspect must be released. Any decision concerning imprisonment could be appealed against in the courts. Consequently, it was possible for two procedures to be simultaneously under way in two different courts: an appeal against detention and a pre-trial detention hearing. That mechanism, which was modelled on the jurisprudence of the European Court of Human Rights, could cause problems for small courts which did not include a criminal judge. Since juries had been eliminated, judgements were handed down by an adjudication panel which was generally composed of one judge and two non-professional magistrate's assistants, each of whom had one vote.

13. With regard to the prison population, he stated that the country had approximately 60,000 prisoners, which amounted to 150 prisoners for every 10,000 inhabitants. That was a high percentage, although it was lower than at the end of the 1980s. It was important to note that the transition to a market economy had put an end to a number of correctional measures such as community service, which offered alternatives to imprisonment because the State could not force private companies to employ convicts as it had previously done with State-owned companies.

14. With regard to the importance of confessions, he said that there had been no changes in the law since the submission of the previous report and that article 157 of the Code of Criminal Procedure stipulated that explanations, depositions or statements made under circumstances in which it was impossible for the person concerned to express himself freely could not be used as evidence. He also referred to the provisions of article 171 of the draft code of criminal procedure, which prohibited the use of unacceptable methods and procedures with regard to persons being questioned.

15. With regard to responsibility for acts committed on the orders of a superior officer, article 144 of the Police Act stipulated that a prohibited act committed by a police officer acting on the orders of a superior would not be considered an offence unless the police officer was aware that, by

executing the order in question, he was committing an offence. It was therefore the superior officer who would be held responsible for the act in question.

16. With regard to the visit to Poland of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Polish Government had no reason not to authorize publication of the report of that Committee, which, moreover, had not noted any systematic practice of torture or ill-treatment during its mission. Of course, there might be isolated cases of violations of international standards by officials, and the Government was fully carrying out its obligation to prevent any such abuses.

17. The members of the Committee would be provided with additional information on the training of prison staff and judicial officers. Prison guards received information on international human rights standards, and announcements concerning possible avenues of recourse in case of ill-treatment were posted in all prisons. The Government was also aware of its responsibility to guarantee that judges, magistrates and prosecutors received training in the field of human rights. A group of several hundred judges was currently participating in a training programme under the auspices of the Ministry of Justice, and prosecutors would soon receive such training. Furthermore, the bar association gave its members human rights training, and the Ministry of Justice provided them with all the necessary materials. Lastly, a Polish non-governmental organization (NGO) organized seminars which were open to all.

18. Medical rehabilitation programmes were also handled on a local basis. There was a whole range of services, financed by the Catholic Church and other religious institutions, local authorities and donations from individuals or foundations, some associated with international organizations, which provided assistance to the victims of acts of violence: in many cases, such persons were the victims of domestic violence but, if necessary, torture victims could also be cared for. The law emphasized not the nature of the ill-treatment, but the consequences for the victims; assistance was provided to those who needed it, regardless of the type of violence to which they had been subjected. In Poland, medical and psychological treatment were covered by the general health system which, although soon to be reformed, still functioned according to the principles of the previous regime: such services were provided on a limited but egalitarian basis to everyone and under all circumstances.

19. He did not know whether Poland had contributed to the United Nations Voluntary Fund for Victims of Torture, but did not think it had. He would draw the attention of the Polish authorities to the matter.

20. With regard to the Constitutional Court, the constitutional amendment establishing the emergency courts dated from 1982, and martial law had been proclaimed in December 1981. The creation of a State court responsible for trying cases dealing with the criminal responsibility of individuals occupying important Government posts, and of the Constitutional Court, had presumably been a way of winning over public opinion after the imposition of martial law. In any case, the structure and jurisdiction of those courts corresponded to

the concerns of a period that was now past, as shown by the fact that the Constitutional Court could not declare an act unconstitutional unless it had been promulgated subsequent to the establishment of the Court itself; the purpose had obviously been to place martial law outside that court's jurisdiction. However, it was easier to reform existing institutions than to create new ones. The Constitutional Court could declare a law or regulation unconsitutional, but only if the matter was referred to it by a court or other body authorized to do so under the law. In practice, there were enough bodies competent to make such a request of the Constitutional Court that referral was always possible, and citizens could initiate such a request in the ordinary courts. If a question of constitutionality arose during a trial, the ordinary court would refer the matter to the Constitutional Court rather than dealing with it. In such cases, ordinary citizens could also consult the Ombudsman, as had been done on several occasions. However, at present, individuals could not lodge complaints with the Constitutional Court; that was one of the essential points scheduled for amendment in the new draft constitution.

21. Mr. GONZALEZ-POBLETE noted that the emergency courts included military courts, which were traditionally composed of members of the armed forces - the air force, army and navy - and had jurisdiction in matters such as offences of a military nature, desertion or abandonment of post. It would therefore be interesting to learn whether police officers and, in particular, members of the State security services, fell under the jurisdiction of the military courts and whether such courts dealt only with military offences or whether they also had jurisdiction in cases involving non-political offences committed by soldiers in the exercise of their functions. For example, if a superior officer inflicted ill-treatment or torture on a subordinate, would the matter be brought before a military or an ordinary court?

22. Mr. PIKIS asked whether a person held in incommunicado detention for 48 hours after arrest could be questioned, and whether he was required to reply to questions or had the right to remain silent. He also asked what was meant by the fact that little weight was given to confessions; in other words, what were the admissibility criteria for confessions, and did the fact that less weight was given to them mean that they must be corroborated in order to be accepted by the courts?

23. It would also be useful to have details of the exact length of pre-trial detention; the previous report of Poland stated that such detention was for a maximum of nine months and could be extended for a further nine-month period, but that the Supreme Court could decide to extend it yet again. He asked how many times the Supreme Court could extend that limit and whether those provisions were compatible with the Convention. It was also important to know whether, when a custodial sentence was handed down by the courts, the period of pre-trial detention was deducted from the length of the sentence.

24. Another matter of concern to him was the fact that the use of force against minors, apparently as a form of punishment, was authorized in correctional establishments under certain circumstances. It might be asked whether the use of force as a punishment could not be considered to be degrading treatment. Was the use of force against individuals by the authorities authorized under other circumstances as well?

25. Mr. DZIALUK (Poland) explained that the military courts had jurisdiction only over soldiers on active service or civilians employed by the military who had committed an offence in the exercise of their functions. Such courts applied the same procedures as ordinary courts with the exception of a few details, for example, the fact that probation could be supervised by a military official rather than by the judicial services. Police and State police officers, on the other hand, fell within the jurisdiction of the ordinary courts.

26. An accused person could remain silent at every stage of the proceedings following his arrest, including the 48 hours during which he could be held in incommunicado detention. There were no specific provisions in the existing legislation concerning that 48-hour period, but the right to remain silent must be respected at all times, a fact demonstrated in the Supreme Court's jurisprudence. What was more, the Supreme Court had ruled that if a person had been questioned as a witness, in which case he could not, except in certain very specific cases, refuse to testify, his deposition as a witness could not be used against him if he was subsequently charged. It must be explained that confessions were admissible only as one among many elements of proof; there again, the Supreme Court had stated on several occasions that individuals admitted guilt for extremely complex reasons and that the courts must exercise extreme caution in considering such confessions. As a result of the Supreme Court's jurisprudence, it was extremely difficult to establish a person's guilt on the basis of a confession alone and in the absence of any other proof.

27. The question of witness cooperation was currently extremely controversial in Poland. One of the unfortunate consequences of opening the country to the outside world had been the development of a new type of organized crime, as a result of which various measures had been proposed to the Government and Parliament for adoption. The Ministry of the Interior had initiated those proposals because it wanted to induce witnesses to cooperate. It was currently impossible to offer a lighter sentence or release to an individual who agreed to testify against his accomplices, even if it was desirable to do so as a means of combating organized crime. A preliminary draft had been rejected by Parliament and severely criticized as an attack on human rights. The only existing legilsation which might be used for that purpose was a provision which stipulated that prosecutors could use the behaviour of a person who had committed an offence as grounds for requesting a lighter sentence; however, that fact must be mentioned in the arguments justifying the court's decision.

28. Pre-trial detention could not exceed a total of two years; only the Supreme Court could prolong it beyond that limit, and only at the request of the Procurator-General for one of three reasons: because there was a need for continued psychiatric observation of the accused, because procedural steps remained to be completed abroad, or because the accused intentionally prolonged the procedure. It was important to note that that two-year limit concerned only cases involving a crime; in all other cases - in other words, for most offences - pre-trial detention lasted a maximum of 18 months and could be extended only by the Supreme Court in the above-mentioned circumstances. The period spent in pre-trial detention was automatically deducted from the sentence handed down by the court.

29. Ms. KOWALCZYK (Poland) said she did not think she had expressed herself clearly and explained that her mention of the use of force referred not to punishment but to specific measures, defined by regulations, to be employed by the staff of correctional establishments for minors and of prisons under very specific circumstances, in other words, when a prisoner's actions posed a threat to his own life or health or to those of others, in cases of incitement to revolt, group escape or property damage resulting in a major disturbance of public order. The use of firearms in prisons was also authorized in such cases.

30. Mr. DZIALUK (Poland) explained that a change of attitude was currently taking place concerning the use of force, which was still governed by an ordinance passed in February 1975 by the Ministry of Justice that was a regulation rather than an act. The same was true of the use of force against juvenile prisoners. That regulation had been challenged for some time on the grounds that an area so closely related to the protection of human rights should be regulated by an act. Those new attitudes had led to the adoption of the new act which had already been mentioned. While it was true that Poland could be criticized for continuing to apply the regulation in question in its prisons, the adoption of new legislation by Parliament took time. In any case, the regulation in question would be replaced by new provisions.

31. Mr. ZUPANCIC requested more information about pre-trial detention. Most civil law countries made a distinction between two types of pre-trial detention: pre- and post-indictment detention. In such countries, pre-indictment detention generally did not exceed a period of two or three, at most six, months; the subsequent period of detention, which continued until the trial, could not usually exceed a total of two years. He was surprised that the Supreme Court could extend detention beyond that limit under the conditions described by Mr. Dzialuk and asked what exactly was the maximum length of detention prior to, and following, the filing of charges. He also asked whether or not the accused had free access to a lawyer during the first 48-hour period since the opportunity to confer with counsel was known to be one of the best ways of preventing torture.

32. Mr. DZIALUK (Poland) replied that the length of pre-trial detention, which was restricted to 18 months for most offences and to 2 years for crimes, was an overall limit which ended when the first sentence was handed down; the relative lengths of pre- and post-indictment detention were of little importance. The Supreme Court's right to extend those limits was the result of recent legislation which had not yet been applied. It was true that in several important cases concerning economic crimes, there were currently persons who had been imprisoned for two, or nearly two, years. Those cases had been considered by the Ministry of Justice, and some of them had been drawn to the attention of the European Commission of Human Rights. They were extremely complex cases but, according to the legislation applied by the Ministry of Justice, the legal limit for detention did not appear to have been exceeded. The problem was all the more complex because one of the accused persons had been imprisoned abroad for a year prior to extradition, and it had been impossible to carry out certain aspects of the legal proceedings during that period. In the same case, another person was currently awaiting extradition. It was extremely difficult to establish whether or not the legal time-limits had been respected in such cases.

33. There was nothing to preent an accused person from conferring with his lawyer during the first 48 hours; the only problem might be that of appointing a lawyer. It often took some time for an arrested person, and the members of his family after they learned of the arrest, to find a lawyer. The system whereby lawyers had been officially designated in urgent proceedings had been abolished because of criticism based on the right to choose one's own counsel. Furthermore, the accused had the right to remain silent at any time during the interrogation and the hearings.

34. Mr. YAKOVLEV requested further information on whether statements by an accused while being questioned in the absence of a lawyer could be used as evidence.

35. Mr. DZIALUK (Poland) said it was for the court to assess how much weight to grant to such statements. In any case, statements extracted by force could not be used as evidence.

36. The CHAIRMAN thanked the Polish delegation for its detailed replies to the Committee's questions. The Committee's conclusions and recommendations would be communicated to the delegation at a later date after the Committee had discussed them in closed session.

37. The delegation of Poland withdrew.

The public part of the meeting rose at 5.25 p.m.